

## DHEC'S EXHIBIT 2



**Robert G. Burgin, Jr., Inc.**  
Consulting Civil Engineers

May 26, 2004

Ms. Wanda Ramsey  
Drinking Water Enforcement Section  
Bureau of Water  
SC DHEC  
2600 Bull St.  
Columbia, SC 29201

**Re: Consent Order 04-058-DW**  
**TESI / Foxwood Hills Subdivision (#3750025)**  
**Oconee County**

Dear Ms. Ramsey:

As required by SC DHEC Consent Order 04-058-DW, please find enclosed a Corrective Action Plan (CAP) which includes a schedule of compliance for repairing and maintaining the Foxwood Hills subdivision storage tank and bringing it back into service.

If you have any questions concerning this matter, please feel free to call upon me at anytime at (803) 781-2965.

Sincerely,

Robert G. Burgin, Jr., Inc.

Robert G. Burgin, Jr., PE

Robert G. Burgin, Jr., Inc.

Samuel B. Davis

Cc: Mr. Bill Scheoning  
Ms. Patsy Land  
Mr. John F. Beach  
Mr. Ken Deaver

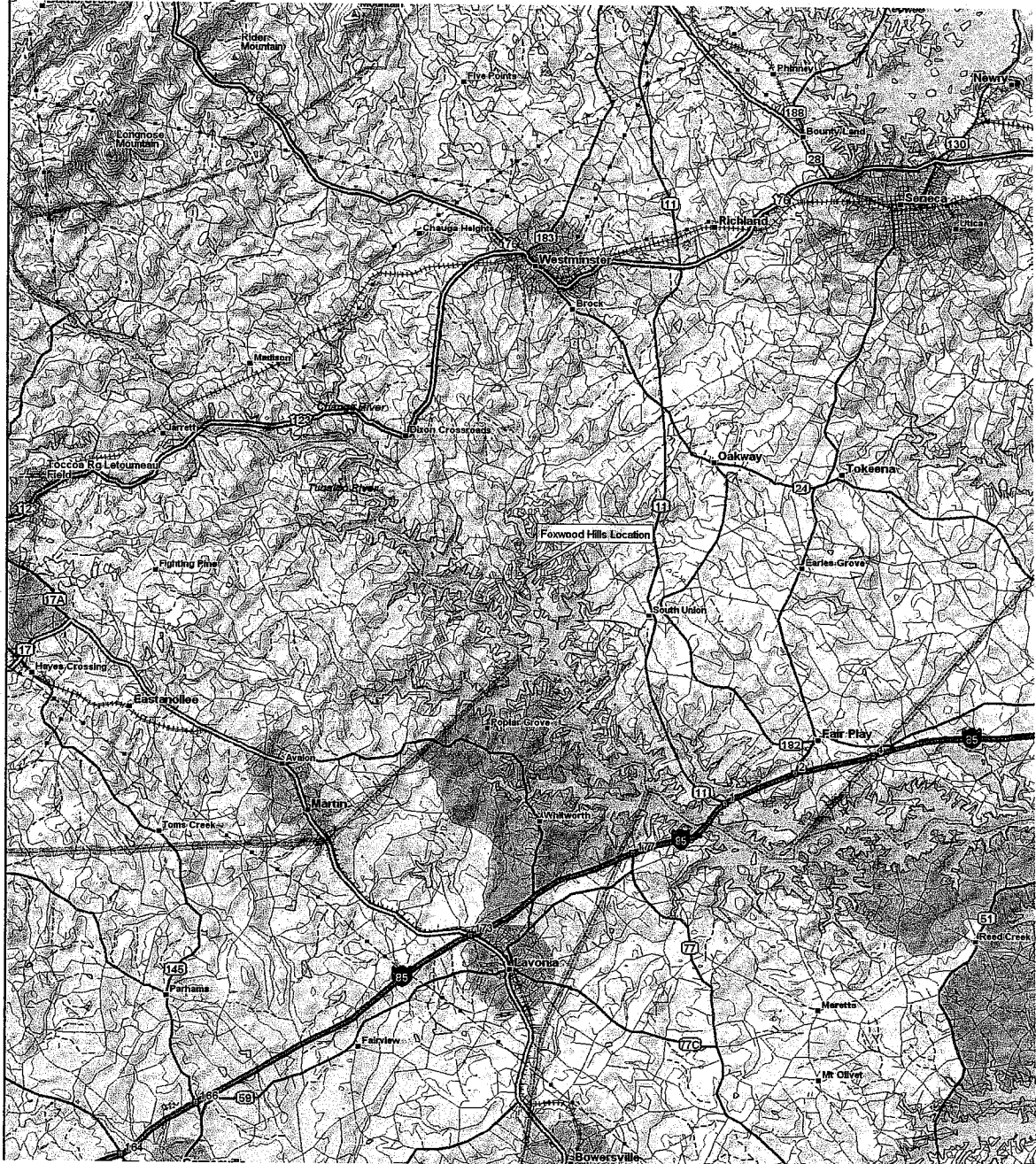
Enclosures

**Corrective Action Plan**  
**FOXWOOD HILLS Water System**  
**Total Environmental Solutions, Inc.**  
**May 26, 2004**

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**I. General Description:**

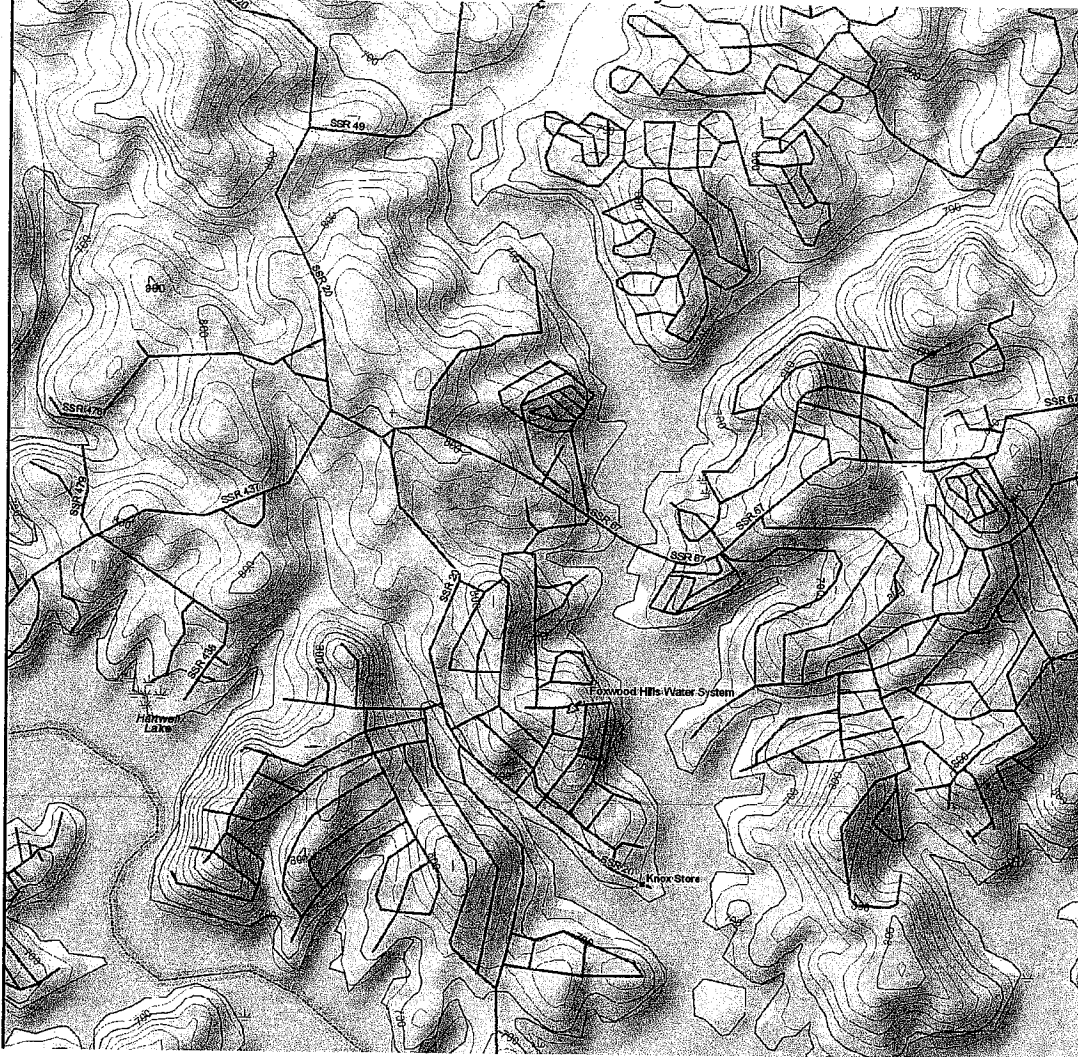
The Foxwood Hills water system is located in Oconee County, S.C. near Westminster, S.C. The facilities are located as shown below and on Exhibit "A" in the rear of this report.



**Corrective Action Plan**  
**Foxwood Hills Water System**

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The following map shows the area more specifically:



The Foxwood Hills water system is a private utility company owned by Total Environmental Solutions Inc. The address for the local contact person follows:

Ms. Patsy Land  
Total Environmental Solutions, Inc.  
2299 Dr. John's Road  
Westminister, SC 29693

The Area Manager's address is as follows:

Mr. Bill Schoening  
Total Environmental Solutions, Inc.  
487 Treasure Lake  
Treasure Lake Mini Mall #4  
Dubois, PA 15801-9010

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The water system is operated under SCDHEC water system # 3750025. The source of water for the system is from Westminster CPW Source # P37108. The reliable system capacity per SCDHEC is 900,000 Gallons Per Day (GPD) based upon the six (6) inch meter supply from the City of Westminster. The system has one elevated tank of 100,000 gallons in volume. The location of the meter interconnect with Westminster CPW and the Foxwood Hills 100,000 gallon elevated tank are shown in the following map and in Exhibit "C." The ground elevation of the 100,000 gallon elevated tank is 830 feet Mean Sea Level (MSL). The overflow elevation of the elevated tank is 953.83 feet MSL. The elevated tank is 123.83 feet tall from base to the overflow elevation. The bottom of the bowl is 100 feet from the base elevation which gives the tank a 23.83 feet working volume. The tank is 28 feet in diameter. The six (6) inch master meter interconnect with the City of Westminster CPW is at elevation 740 feet MSL. The incoming pressure from Westminster CPW is from 120 to 127 Pounds Per Square Inch (PSI). The hydraulic grade line at the six (6) inch meter is 1033 feet MSL. Exhibit "D" of this report shows the dimensions of the elevated tank.

SCDHEC states in draft permit # 3750025 dated April 2, 2004 that there are 701 connections existing on the water system. Total Environmental Solutions, Inc. does not agree with this number of connections. Total Environmental Solutions, Inc. feels the correct number of connections is 543. The census data for Oconee County, S.C. lists the number of persons per household at 2.4 people per house. Therefore, based upon a usage of 100 GPD per person the average daily demand for the Fox wood Hill Existing customers would be calculated as follows:

Average Daily Demand = 2.4 people per residence X 100 GPD/person X 543 residences  
(TESI) = 130,320 gallons per day

Average Daily Demand = 2.4 people per residence X 100 GPD/person X 701 residences  
(SCDHEC) = 168,240 gallons per day

Peak Daily Demand = 2.4 people per residence X 100 GPD/person X 543 residences X 1.5  
(TESI) = 195,480 gallons per day

Peak Daily Demand = 2.4 people per residence X 100 GPD/person X 701 residences X 1.5  
(SCDHEC) = 252,360 gallons per day

Since the average and peak demand are less than the reliable system capacity per SCDHEC of 900,000 GPD based upon the six (6) inch meter supply from the City of Westminster, the source of water supply is not an area of concern for the Foxwood Hills water system at this time.

SCDHEC has calculated the maximum allowable taps at 556 residential equivalent unit (REU) taps, based upon the size of the existing 100,000 gallon ground storage tank and

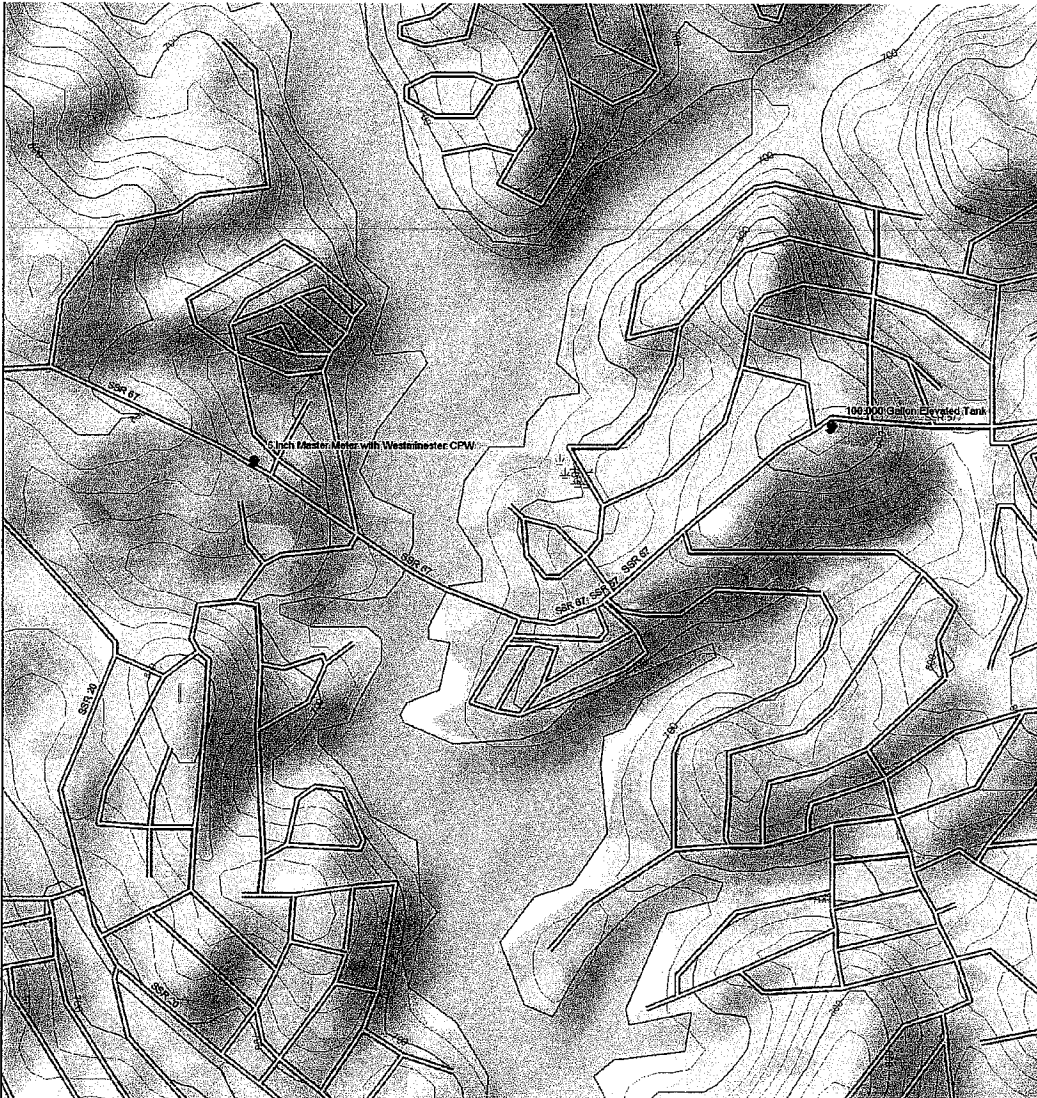
**Corrective Action Plan  
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SC Reg. 61 -58.4C(1)(a); That regulation states in relevant part:

*Sizing - where fire flows are provided, tanks shall be sized to provide two (2) hours of supply for a combined flow of peak hour domestic plus fire flow; or, the storage capacity (or equivalent capacity) shall equal one-half (1/2) the maximum daily consumption, whichever is greater. [emphasis added]*

The words, "whichever is greater" make it clear that this sizing requirement applies only to facilities "where fire flows are provided." Since TESI does not provide fire flows within Foxwood Hills, the 556 REU maximum does not accurately apply. Moreover, as the SCDHEC Operating Permit itself notes in Section I.D, the Town of Westminster provides reliable pressurized water capacity of at least 900,000 gallons per day. This capacity will reliably support peak system demands far in excess of not only 556 REU, but also the 701 tap connections SCDHEC contends that it has documented.





## II. Corrective Actions

Consent Order 04-058-DW required in part the following in the section NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §~ 44-55-10 et seq. (2002), that the Respondent shall:

- “3. Within sixty (60) days of the execution date of this Order, have the storage tank evaluated by an engineer registered in the State of South Carolina and submit a Corrective Action Plan (CAP) which includes a schedule of compliance for repairing and maintaining this storage tank and bringing it back into service. This CAP will be evaluated by the Department and, upon approval by the Department, will become an enforceable part of this Order.”

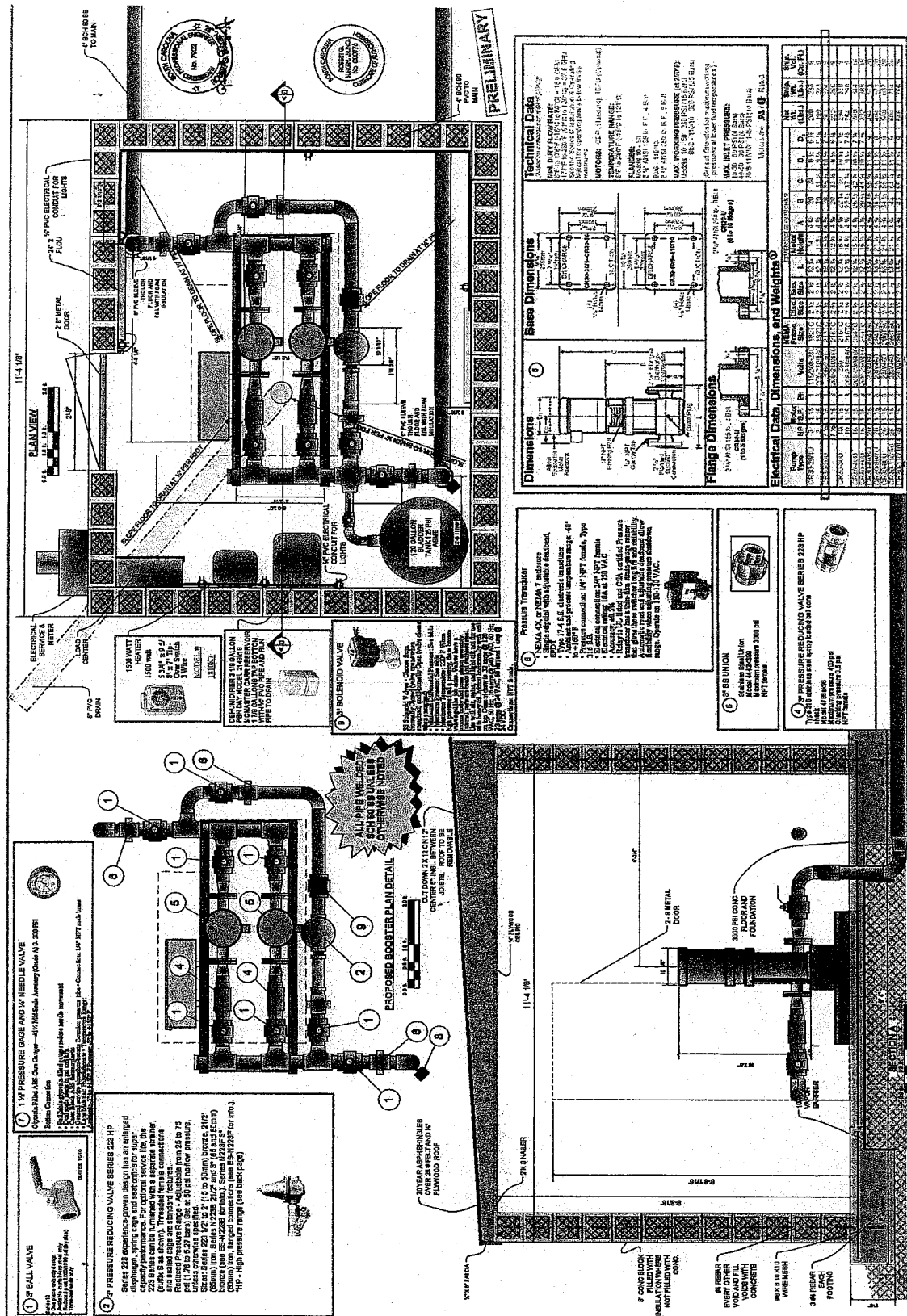
Engineering data suggests that the existing elevated storage tank may not be 100% functional for use by the water system. This condition is caused by the pressure supplied by the Westminister having a hydraulic grade elevation of 1033 feet MSL. The overflow elevation of the elevated tank is 953.83 feet MSL, therefore the altitude control valve on the elevated tank closes the tank off from the water system not allowing water to come out or into the tank unless there is a severe loss of pressure from the supply from Westminister CPW or in the Foxwood Hills water distribution system. The writer feels that this was probably done sometime after the water system was connected to the Westminister CPW system and long after the elevated storage tank had been constructed, but before TESI purchased the system in December, 2000. It appears to the writer that the pressure from the interconnection was originally to have had pressure reduced by means of a pressure reducing valve. This pressure reducing valve exists but is not in use at this time. This bypassing of the pressure reducing valve was most likely done to avoid a few high elevation areas of low pressure. If the minimum elevation is 930 feet MSL and it is wished to maintain a minimum pressure of 30 PSI at the highest elevations, then the highest elevation on the system would need to be no higher than 861 feet MSL. As can be noted from the following map which is also included as Exhibit “E”, there are four areas inside the Foxwood Hills water system that have elevations higher than the 861 feet MSL. Only areas #1 and 2 are of concern in this report, since areas #3 and 4 are in an undeveloped section and are very small. Areas #1 and 2 could experience low pressure if the system pressure was reduced to match the elevations of the tank.

Booster pumps would be located as shown on the following map:



**Robert G. Burgin, Jr., Inc.**  
PO Box 1804  
Irmo, SC 29063

## Corrective Action Plan Foxwood Hills Water System



### **III. Location of Subject Area and Elevated Tank**

The location of the subject area is shown on the attached Exhibit "A." The elevated tank is located in the Foxwood Hills Subdivision in Oconee County

Elevated tank coordinates for the facility are:

Latitude 34° 34.356'

Longitude 83° 05.426'

### **IV. Equipment and Service Failure or Shutdown**

Duplex equipment will be provided for blowers and pumps. A continuous program of inspection and maintenance by licensed operators has been established by Total Environmental Solutions, Inc. This type of on-going maintenance program is established to anticipate equipment failures.

### **V. Legal/Property Requirements**

The altitude and geographic characteristics of this project require TESI to install and operate a pump station in the Kingston section of Foxwood Hills. TESI does not presently own any property in Kinston on which to locate the pump station. TESI has identified a suitable lot for this purpose, and has reached an informal agreement with the lot owner to purchase the lot for a certain price.

Like many lots in Foxwood Hills, all Kinston lots are governed by restrictive covenants that the developer filed in the chain of title around 1977. These restrictive covenants legally prohibit TESI from installing and operating a water pump station on any lot in the Kinston section, including the lot TESI has selected.

TESI's legal counsel states that there are only two ways TESI can gain ownership of the Kinston lot free and clear of the restrictive covenants: 1) amend the restrictive covenants to expressly allow TESI's desired use; or 2) purchase the lot through condemnation and obtain a deed in condemnation from the Court that expressly conveys the lot to TESI free from the current usage restrictions.

#### **a. Amendment of Restrictive Covenants**

The developer of Foxwood Hills failed to include a provision in the restrictive covenants allowing for their amendment. Consequently, the only way that TESI can amend them is by obtaining a written and probated (that is, notarized in the presence of witnesses) amendment from every Kinston lot owner, and then filing those amendments with the Oconee County Registrar of Deeds. TESI is informed that there are more than 200 lots within the Kinston section. Many of those lot owners live either in other areas of South Carolina, or in other states. TESI cannot force those lot owners to sign and probate a proposed amendment – they must do so voluntarily. If a single lot owner refuses to sign

and probate, or if even one lot owner cannot be located, any attempted amendment will fail.

**b. Condemnation of Lot**

As a public utility providing service in South Carolina, TESI possesses the statutory and constitutional power to condemn property for valid utility purposes. In order to do so, TESI must file a condemnation lawsuit in state court, and follow an intricate statutory scheme of procedure. If successful in the condemnation lawsuit, TESI would be legally entitled to a deed issued by the Court transferring ownership of the lot to TESI free and clear of any restrictive covenants that might be contrary to TESI's anticipated utility use.

TESI can attempt to engage in a "friendly" condemnation lawsuit in which it and the seller cooperate towards the mutually-desired issuance of a condemnation deed. Even with the seller's cooperation, TESI must observe and follow the procedural requirements set forth in South Carolina's condemnation statutes. Moreover, nearby landowners may still intervene into the lawsuit and attempt to delay or completely block TESI's goal.

Like amendment of the restrictive covenants, condemnation is a costly and unpredictable method of obtaining unrestricted possession of the Kinston lot. TESI believes, however, that obtaining this ownership through condemnation would be swifter and more certain than doing so through covenant amendment.

TESI's legal counsel feels that TESI must have at least one year from initiation of the condemnation lawsuit in order to obtain the desired condemnation deed. It is possible that TESI will be able to accomplish its goal in slightly less than one year, but matters completely beyond TESI's control, such as legal resistance from or appeals by nearby landowners, could easily cause this process to take significantly longer. Moreover, since the outcome of a court proceeding cannot ever be guaranteed, it is also possible that TESI will fail entirely in its condemnation efforts. Finally, it is possible that even prior to initiation of the lawsuit, the presumptive seller of the Kinston lot will refuse to follow through with the informal agreement to sell that TESI currently has with him. The occurrence of any of these possibilities, or any other delay or impediment demonstrably beyond TESI's control, must be expressly treated by SCDHEC as an event of *force majeure*, entitling TESI to an extension to, or change in, the relevant conditions of this CAP, as appropriate.

**VI. Schedule of Implementation**

- 30 days after receiving approval by SCDHEC of CAP submit preliminary engineering report to SCDHEC.

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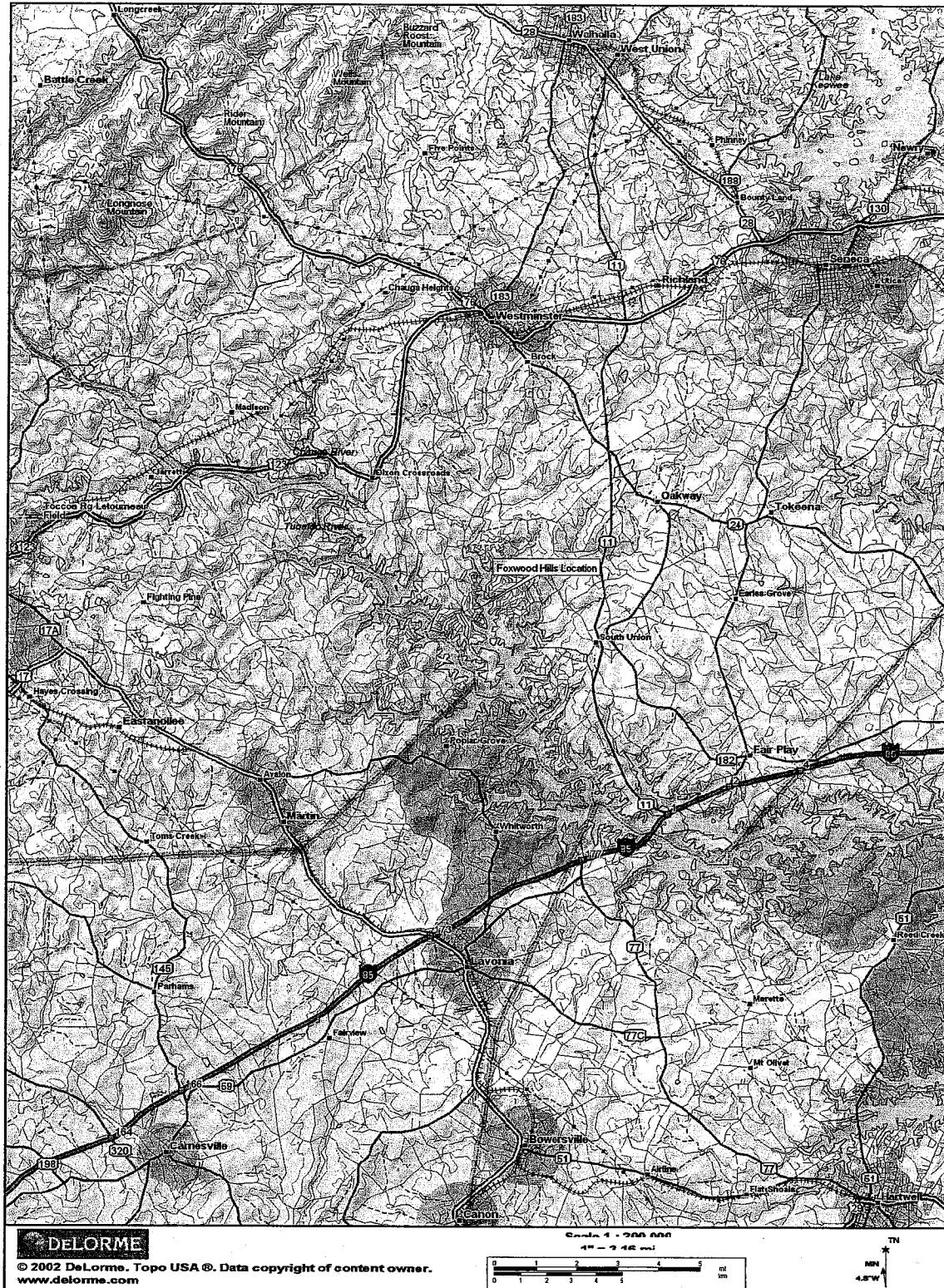
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- 30 days after receiving approval by SCDHEC of preliminary engineering report initiate condemnation lawsuit towards obtaining unrestricted title to Kinston lot for placement of pump station.
- 60 days after receiving approval by SCDHEC of preliminary engineering report submit engineering drawings for approval by SCDHEC.
- 365 days after initiation of condemnation lawsuit or 60 days after receiving approval by SCDHEC of engineering drawings, whichever occurs later, start construction of booster stations, tank painting and pressure reducing valve upgrade.
- Complete construction within 365 days of starting construction and submit as-built engineering drawings.

**Exhibit "A"**

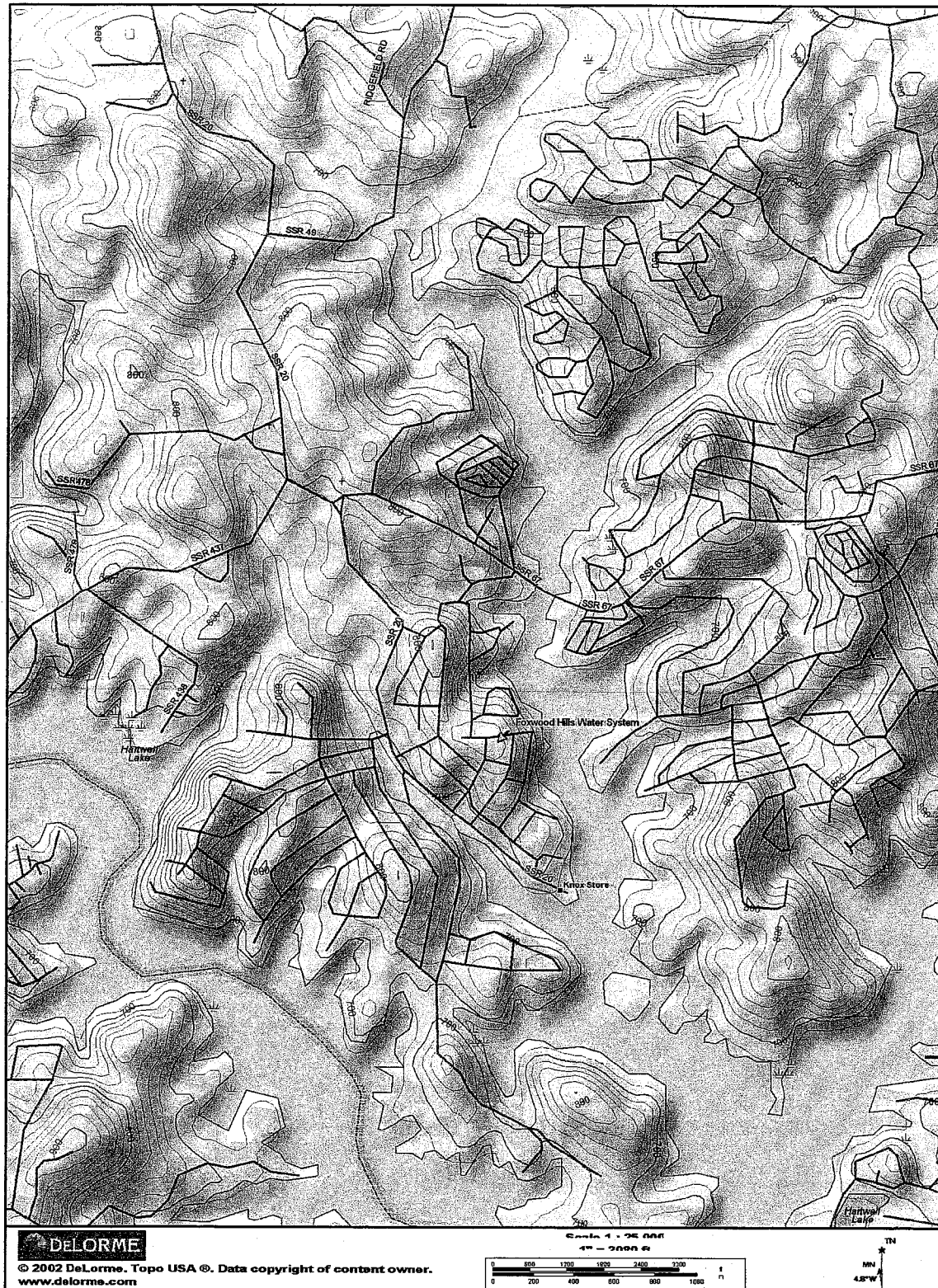


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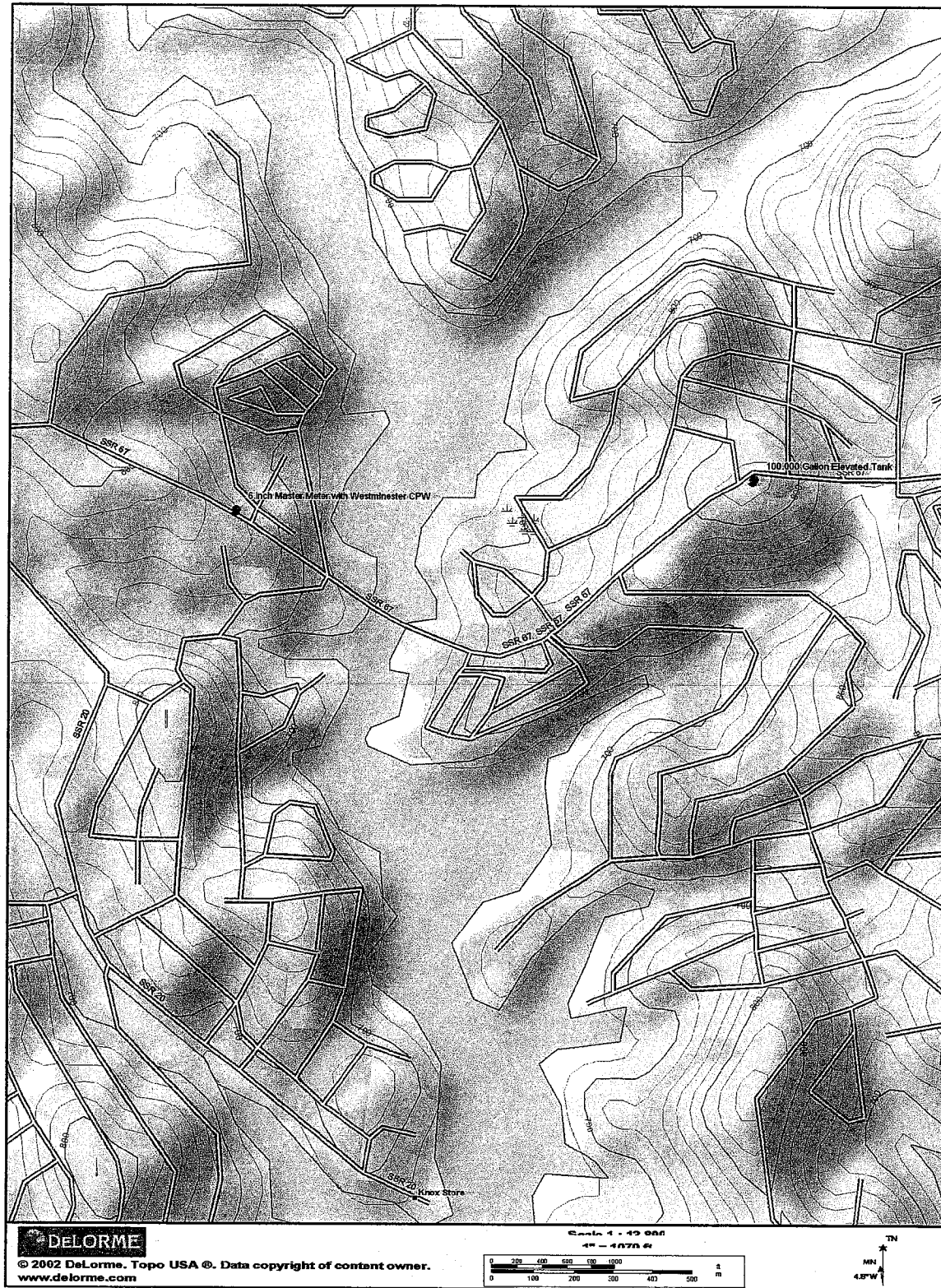


**Exhibit "B"**

**Corrective Action Plan  
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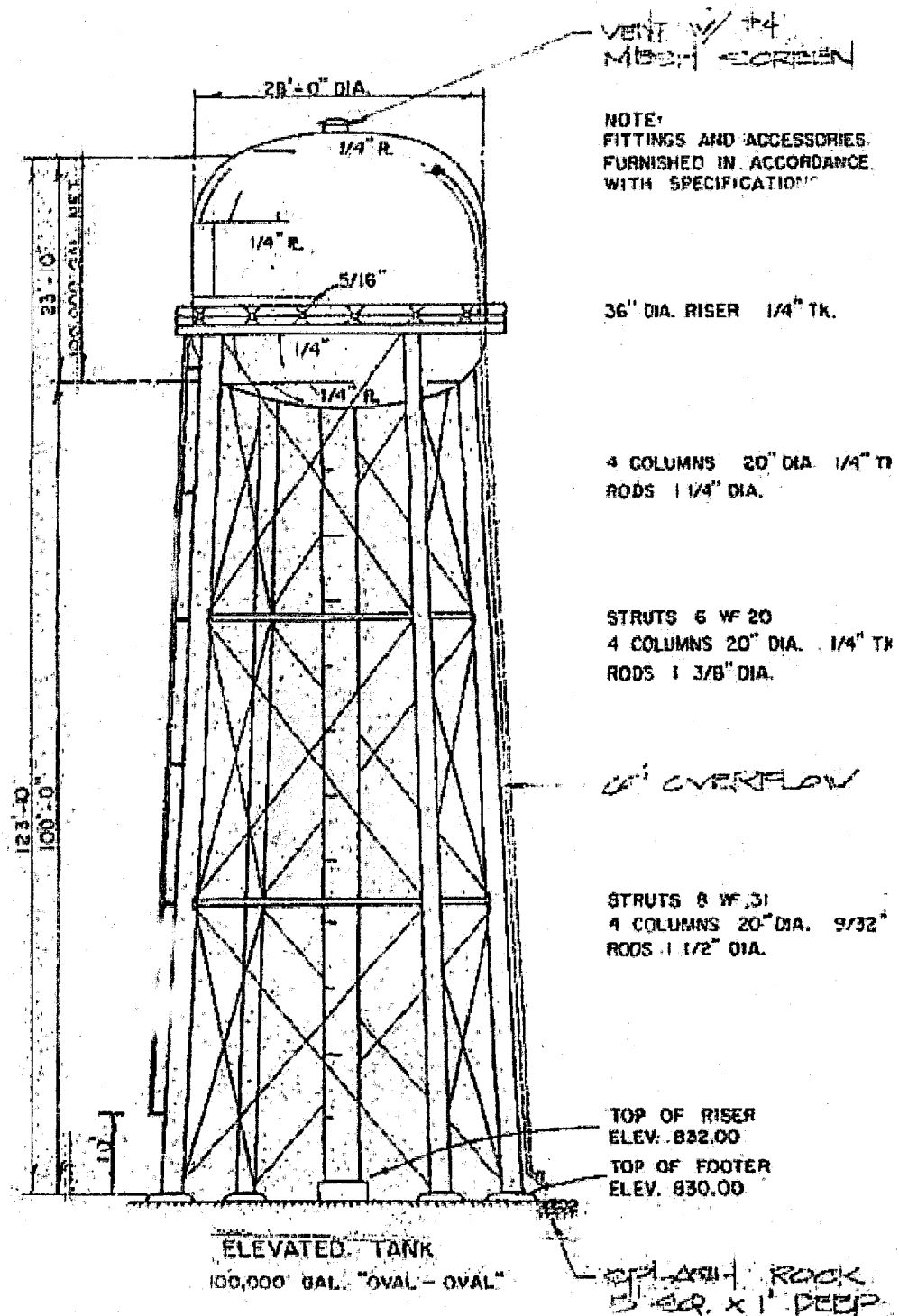
**Exhibit "C"**



**Exhibit "D"**



Corrective Action Plan  
Foxwood Hills Water System



**Exhibit "E"**

